



Minnesota Multi Housing Association

1600 West 82nd Street, Suite 110, Bloomington, MN 55431
Main (952) 854-8500 Fax (952) 854-3810
www.mmha.com

August 23, 2019

The Honorable Jacob Frey, Mayor
Members of the City Council
Minneapolis City Hall
350 South 5th Street
Minneapolis, MN 55415

via electronic transmission

Dear Mayor Frey and Members of the City Council,

We again write to express our deep concerns with the rental screening and deposit regulation proposal under consideration by the Minneapolis City Council. On August 8, 2019, the ordinance authors released an updated draft that made nominal improvements while introducing additional unproven and unenforceable concepts that will further destabilize the rental market in Minneapolis.

Our opposition to the ordinance remains rooted in the obvious conclusion they will shift cost and risk onto responsible renters and property managers. The proposal avoids the hard work of providing the public services necessary to support hard-to-house populations and help people get back on their feet.

Ordinances Should Be Data Driven. The updated draft makes it clear the ordinance lacks a basis in research and data which should be a prerequisite to any regulation that impacts over half the city's population. There is no clearer example of this than the disappearance of the Wilder Foundation report.

As justification for eliminating review of relevant criminal history, the original draft cited a Wilder Foundation report published in January 2019. That draft erroneously characterized the report as finding "that many criminal offenses have no significant effect on housing outcomes and that the effect of a prior criminal offense on a resident's housing outcome declines over time."

Even at the time of publication, it was obvious the report had limited or no application to the rental market as a whole. In July 2019, Wilder published an update cautioning policy makers against misapplying and overstating its findings. In part, the update explained (emphasis in original):

"We don't know if the results above can be applied to the rental population as a whole. This study was intended to inform the policies and practices of the nonprofit housing providers that commissioned the study. ... **We couldn't control for everything that contributes to housing outcomes, and we don't know how much that affects our results.** ... **We don't know the impact of every kind of criminal background.**"

The updated ordinance draft includes only unsourced statements that offer no evidence to support a prohibition on relevant criminal background checks. Some information recited in the

ordinance's preamble is not in dispute; rather, much of it describes a problem – lack of available affordable housing – which the proposal fails to address and will likely exacerbate.

Other information highlights serious concerns with the criminal justice system that are not resolved by the proposal and does not serve as evidence the proposal will result in positive change.

Omissions and Inconsistencies Demand Repair. The screening ordinance makes no attempt to distinguish between ex-offenders who have demonstrated rehabilitation from a criminal past and those who have simply timed out of incarceration. This is significant since, by starting the time limit on consideration of convictions from the point of sentencing, the ordinance effectively *requires* property managers to accept many offenders immediately following release from incarceration.

For many convictions, including predatory offenses, the period between end of recommended sentencing and prohibition on consideration of a conviction in rental screening is minimal to nonexistent. For instance, the ordinance allows permanent consideration of offenses which trigger a lifetime predatory offender registration but does not allow ongoing consideration of offenses which require predatory offender registration for an initial ten-year period.

As a result, a person could have their conviction time out from consideration under the ordinance while still required to register as a predatory offender for years to come. This leaves gaping holes in the ordinance and exposes Minneapolis rental residents to real risk.

In just one example, a person who is convicted of 1st Degree Criminal Sexual Conduct – in colloquial terms: rape – typically is subject to lifetime predatory offender registration. However, a person who is convicted of 1st Degree Criminal Sexual Conduct for sexually assaulting a child between the age of 13 and 16, and who is at least 48 months older than the victim and in a position of authority, is not subject to lifetime registration. Sentencing guidelines call for an eight-year prison term. *Minn. Stat. 243.166, 609.342.*

Therefore, property managers could be *required to accept* someone who abused their position of authority to assault a teenager immediately after their release because the ordinance prohibits consideration of the underlying offense after seven years from the date of sentencing.

An examination of the Minnesota Sentencing Guidelines Commission's (MSGC) work reveals more troubling inconsistencies and omissions. The MSGC's felony decay factor is more than double the length of time the ordinance allows for consideration of most felony convictions in rental screening. According to the guidelines, a felony conviction for which a sentence is executed expires from consideration in criminal history score once "a period of fifteen years elapsed after the date of expiration of the sentence." *2019 Minnesota Sentencing Guidelines & Commentary*.

The updated draft allows consideration of three felony convictions for a period of ten years from sentencing: 1st Degree Assault, 1st Degree Arson, and Aggravated Robbery.

The MSGC classifies 1st Degree Assault as Severity Level 9 and assigns it a weight of 2 points - the highest point level - for determination of sentence length. Other offenses classified under Severity Level 9 include: Assault of an Unborn Child 1st Degree, Criminal Abuse of Vulnerable Adult (Death), Death of an Unborn Child in the Commission of a Crime, Engaging or Hiring a Minor to Engage in Prostitution, Kidnapping (Great Bodily Harm), Manslaughter 1st Degree, Manslaughter of an Unborn Child 1st Degree, Murder 3rd Degree, Tampering with Witness, Aggravated 1st Degree. Other offenses which receive 2 points under the weighting system include 1st Degree Murder.

The MSGC classifies 1st Degree Arson and Aggravated Robbery 1st Degree as Severity Level 8 and assigns them a weight of 1.5 points for determination of sentence length. Other offenses

classified under Severity Level 8 include: Burglary 1st Degree (w/ Weapon or Assault), Criminal Abuse of Vulnerable Adult (Great Bodily Harm), Criminal Vehicular Homicide (Death), Criminal Vehicular Homicide (Death, and Qualified Prior Conviction), Deprivation of a Vulnerable Adult (Great Bodily Harm), Drive-By Shooting (Toward a Person or Occupied Motor Vehicle or Building), Emergency Telephone Calls and Communications (Reporting Fictitious Emergency Resulting in Serious Injury or Death), Escape with Violence from Felony Offense, Kidnapping (not in Safe Place or Victim Under 16), Malicious Punishment of Child (Great Bodily Harm), Riot 1st Degree.

Why the three crimes were selected as exceptions despite dozens of other offenses being deemed similarly severe by a nonpartisan panel of experts is unknown to anyone other than the limited few involved in the creation of the ordinance.

Absent further explanation, there appears to be no rational basis for either the time limits or the offenses enumerated in the updated draft ordinance.

Proposal Ignores Past Lessons. Beyond inconsistencies in treatment of different types of convictions, the proposal creates a double standard between those who property managers are prohibited from employing at a rental property and who property managers are required to accept as a renter.

In 1995, the Minnesota Legislature passed the Kari Koskinen Manager Background Check Act. *Minn. Stat. 299C.66-71*. The law requires rental owners to conduct robust background checks on any “individual who is hired or is applying to be hired by an owner and who has or would have the means, within the scope of the individual's duties, to enter tenants' dwelling units.”

A person who is convicted of committing or attempting to commit the following crimes is prohibited from ever being hired as a rental property employee with that type of access: 1st Degree Murder, 2nd Degree Murder, 1st Degree Manslaughter, 1st Degree Assault, 2nd Degree Assault, 3rd Degree Assault, Kidnapping, Criminal Sexual Conduct 1st-4th Degree, 1st Degree Arson, Kidnapping.

A person who is convicted of committing or attempting to commit the following crimes is prohibited from being hired as a rental property employee with that type of access for ten years since the date of discharge of the sentence: felony 3rd Degree Murder, 2nd Degree Manslaughter, Criminal Vehicular Homicide or Injury, 4th Degree Assault, 5th Degree Assault, Simple Robbery, Aggravated Robbery, False Imprisonment, Theft, Burglary, Terroristic Threats, Stalking.

Again, without explanation or reason, the proposed ordinance treats certain convictions wildly different than others viewed as similarly severe under trusted legal authorities. In the process, the proposal sets up an inexplicable scenario where the same person cannot be employed by a property manager because of a major criminal conviction but *must be permitted* to reside in the building.

Proposal Lacks Due Process. The updated draft enhances penalties for noncompliance with the new regulations, stripping away the due process rights of a regulated entity in the process.

A single notice of noncompliance, with no explanation of how the city will determine the validity of a complaint or ability to contest the finding, precedes rental license revocation for a second violation at any property where an owner has an ownership interest. The second violation apparently need not be at the same property as the original violation.

It is unclear how revoking a rental license, which could force renters to vacate their units, following a single instance of non-compliance at a property achieves the goal of stabilizing vulnerable populations.

The new penalties exacerbate a fundamental contradiction in the ordinance: the city simultaneously expects multifamily property managers to be partners in public safety and keep rental properties crime free, while severely limiting the ability to keep properties safe and crime free for their residents through responsible screening policies. The city's current licensing tier structure assigns a significant penalty to rental license holders for "qualifying incidents of disorderly conduct of tenants and their guests." *City of Minneapolis Regulatory Services, FAQ: Tiering and Rental License Renewal Billing*, accessed 8/23/2019.

Council Should Address Root Causes. Rather than passing unproven and flawed ordinance, we urge the city to focus on solutions that address root causes of housing instability instead of papering over them.

According to the Wilder Foundation, 64 percent of those experiencing homelessness have a serious mental illness, 57 percent have a physical health condition and 58 percent have an impairment limiting their ability to work.

Those experiencing instability need real help, not false hope. As we learned from the Wall of Forgotten Natives Encampment, better connections to existing supportive services and innovative approaches to reaching vulnerable populations are necessary for stabilizing, improving and empowering lives.

Similarly, ex-offenders reentering society need support to succeed. Under President Obama, Federal Bureau of Prisons prison reform efforts recognized the "first and most important step in reentry planning is obtaining information about an individual inmate's risk of recidivating and programmatic needs that will inform development of an individualized reentry plan."

In May 2014, the Obama Administration issued guidance "prioritizing the use of cognitive behavioral therapy and other evidence-based treatment programs proved to be effective in correctional settings." The administration found "recidivism risk can be effectively reduced through evidence-based programming that targets criminogenic needs, such as courses in cognitive behavioral therapy and other topics"

Within three years of release, the Minnesota Department of Corrections says roughly a third of offenders will be reconvicted of a new felony. *Minn. Dept. of Corrections: 2018 Performance Report*. Before adopting the proposed ordinance, the city needs to do more work to understand the relationship between post-release recidivism, behavioral issues and rental success rates in market-rate housing because higher turnover and disruption is a direct driver of increased rents.

We also believe in the power of technology and education to help find housing for those who face obstacles or have a troubled history. OneApp, a startup company based in Portland, Oregon, is helping renters of all backgrounds find housing faster by making it easier to sort through unique screening criteria. OneApp is helping Portland gain the data needed to make informed decisions that help without hurting.

Renter education programs, such as RentWell, and renter guarantees are tools used in many cities to help people overcome previous challenges and gain housing without shifting cost and risk to existing renters.

Minneapolis Deserves Informed Governance. In an effort to fill gaps in research on the relationship between rental screening criteria and market-rate housing outcomes, the Family Housing Fund and Wilder Research are conducting a new study focused on market-rate rental properties.

Minnesota Multi Housing Association members are voluntarily participating in this study in order to advance informed decision making. MHA members are committed to providing quality homes

at all price points and remain open to an evidence-based, data-driven reexamination of rental policies.

Given the aforementioned flaws in the current proposal, we believe the city should:

- i) pause action on the proposal until real data is available to inform how changes to screening criteria will impact responsible renters,
- ii) conduct a city-wide discussion about how the ordinance will impact neighborhoods which have fought for years to gain stability and improve livability, and
- iii) thoroughly examine the work of the Sentencing Guidelines Commission and criminal statutes to understand how the ordinance compels property managers to house recently released people who have committed predatory offenses without regard to rehabilitation.

With the many unknowns and inconsistencies, it is clear the proposal needs more work. We urge the city to work cooperatively with stakeholders to produce an ordinance that works for all of Minneapolis.

Sincerely,



Nichol Beckstrand
President, CEO



Mike Garvin
Chair, Board of Directors

